IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 6918 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

JAVANJI SOMAJI THAKOR & 1 - Appellant(s)
Versus
SHANKER DHULAJI MENA (ADIVASI) & 2 - Defendant(s)

==========

Appearance :

MR AMIT C NANAVATI for Appellant(s) : 1 - 2.
NOTICE UNSERVED for Defendant(s) : 1,
NOTICE SERVED BY DS for Defendant(s) : 2,
NOTICE SERVED for Defendant(s) : 3,

==========

CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 26/02/2007

ORAL JUDGMENT

Original claimants, who happened to be an unfortunate parents of

deceased Hansaben, a child aged 12 years, have approached this Court for enhancement of the compensation. They had filed Motor Accident Claim Petition No. 1113 of 1991 before the Motor Accident Claims Tribunal [Aux.], Mehsana for claiming compensation of Rs.1 lakh on account of the death of their daughter in a vehicular accident which occurred on 21/8/1991 at about 4.30 p.m. On that day she was walking on the road near village Baliyasan where she was knocked down by a tanker bearing Registration No. GTE 7738. She died instantaneously. The tanker was driven by respondent no. 1, who has now been deleted. It was averred in the petition that the tanker was driven at a high speed and in rash and negligent manner. As a result of the same, the accident occurred and the girl was fatally injured. The appellants claimed aforesaid amount alleging that the deceased died due to rash and negligent act of respondent no. 1. The offending vehicle was at the relevant time owned by respondent no. 2 and it was insured with respondent no. 3.

1.1. The claim was resisted by respondent no. 3 by filing written statement at Exh. 8. No written statement was filed by respondents no. 1 and 2. Respondent no. 3 denied the allegations made in the petition and prayed that the petition be dismissed.

1.2. On the basis of the material produced before it, the claims Tribunal held that respondent no. 1 – driver was negligent and the accident occurred due to his negligence. So far as the quantum is concerned, the Tribunal awarded a sum of Rs.34,400/- together with interest @ 12% pa from

the date of application till realization and the proportionate costs. Being dissatisfied with the quantum of compensation, the appellants have approached this Court by filing this appeal.

2. I have heard Mr. Amit C Nanavati, learned advocate for the appellants. Respondents though served, have not appeared. It is submitted by Mr. Nanavati that the Tribunal has committed error in taking the notional income at Rs.275/- per month. He has further submitted that the multiplier of 10 applied by the Tribunal is on lower side. He has further submitted that the Tribunal has committed error in not awarding any compensation under the heads of conventional amount and loss to estate.

3. So far as the question of negligence is concerned, I have perused the discussion in the judgment. It appears that the Tribunal has rightly held respondent no. 1 responsible for causing the accident. The material on record clearly shows that due to his negligence and rashness, the accident occurred and the child died. I am, therefore, in full agreement with the conclusion of the Tribunal with regard to negligence of respondent no. 1.

3.1. So far as the quantum of compensation is concerned, per se, it is on lower side. The Tribunal ought to have considered the notional income of the child at Rs.600/- per month and ought to have determined the economic loss

on the basis of the same. Further the Tribunal has wrongly applied the multiplier of 10. In the facts and circumstances of the case, the multiplier ought to have been at 16. The monthly income would be assessed at Rs.400/- after 1/3rd deduction towards personal expenses of deceased and the annual loss of income would come to Rs.4,800/-. Applying multiplier of 16, the loss of income would be Rs.76,800/-. Thus, under this head, the appellants would be entitled to receive Rs.76,800/-. The Tribunal has already awarded a sum of Rs.33,000/-. Hence, additional amount of Rs.43,800/- is awarded under this head. Admittedly no amount was awarded under the heads of conventional amount and loss to estate. On that count also Rs.10,000/- each can be awarded and it is hereby awarded. So far as the funeral charges are concerned, the Tribunal has awarded Rs.1,000/-, which is on lower side. The appellants have claimed Rs.4,000/- towards funeral charges. I do not see any reason to curtail the amount under this head. Thus, the appellants are entitled to have additional compensation of Rs.66,800/-. The total compensation comes to Rs.1,01,200/-. Since the claim is restricted to Rs.1 lakh, it is fully allowed i.e., to the extent of of Rs.1 lakh together with interest @ 12% p a on additional amount and proportionate costs. The appeal is allowed.

[Akshay H Mehta, J.]

* Pansala.